

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Mark Anthony Smith, Jr.,

Case No. 21-CV-2249 (DSD/ECW)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Ashley Youngbird, Correctional Officer;
and Mr. Ortega, Correctional Officer,

Defendants.

By separate order, this Court has granted the application to proceed *in forma pauperis* of plaintiff Mark Anthony Smith, Jr., and has ordered that service of process be effected on defendant Ashley Youngbird. That said, upon review of the amended complaint submitted by Smith, this Court concludes that the pleading fails to state a claim on which relief may be granted with respect to “Mr. Ortega,” the other defendant named to this lawsuit. Accordingly, this Court will recommend that Mr. Ortega be dismissed without prejudice from this litigation.

Under § 1915A(a), “[t]he court shall review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” Any portion of a complaint reviewable under § 1915A that is frivolous, malicious, or fails to state a claim on which relief may be granted must be dismissed. *See* 28 U.S.C. § 1915A(b). In reviewing whether a complaint states a claim on which relief may be granted, this Court must accept as true all of the factual

allegations in the complaint and draw all reasonable inferences in the plaintiff's favor. *See Aten v. Scottsdale Ins. Co.*, 511 F.3d 818, 820 (8th Cir. 2008). Pro se complaints are to be construed liberally but still must allege sufficient facts to support the claims advanced. *See Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

Smith's pleading alleges that defendant Youngbird, a former correctional officer employed by the Minnesota Department of Corrections, sexually assaulted him on six occasions in 2018. The amended complaint, however, does not include any allegations whatsoever regarding defendant Ortega; indeed, outside of the caption and the list of defendants, Ortega is not mentioned at all in the amended complaint. Put another way, the amended complaint provides no factual basis upon which to conclude, even if each of the allegations in the complaint is assumed to be true, that Ortega acted unlawfully. It will therefore be recommended that Ortega be dismissed without prejudice from this litigation. Youngbird will be directed by separate order to respond to the complaint.

RECOMMENDATION

Based on the following, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that defendant Ortega be DISMISSED WITHOUT PREJUDICE from this litigation pursuant to 28 U.S.C. § 1915A.

Dated: November 3, 2021

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).